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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/546,966	04/11/2000	David T. Pollock	ENDOV-51639	4186
24201	7590	06/23/2005	EXAMINER	
FULWIDER PATTON LEE & UTECHT, LLP HOWARD HUGHES CENTER 6060 CENTER DRIVE TENTH FLOOR LOS ANGELES, CA 90045			BUI, VY Q	
			ART UNIT	PAPER NUMBER
			3731	

DATE MAILED: 06/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/546,966

Applicant(s)

POLLOCK, DAVID T.

Examiner

Vy Q. Bui

Art Unit

3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 and 36-39 is/are pending in the application.
- 4a) Of the above claim(s) 4, 11, 16, 18, 19, 21 and 24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 7-10, 12-15, 17, 20, 22, 23 and 36-39 is/are rejected.
- 7) ☒ Claim(s) 6 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

Claim 6 is objected to under 37 CFR 1.75(c), as being an incomplete claim and of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 1-3, 5, 7-9, 12-15, 17, 20, 22, 36 and 38-39 are rejected under 35 U.S.C. 102(e) as being anticipated by DRASLER et al (6,245,101).

As to claims 1-3, 5, 7-9, and 12-15, DRASLER (Fig. 5, 28) discloses a medical apparatus in a hollow cylinder configuration with open cells formed by longitudinal members or circumferentially spaced beams 10, which join at merge sections/connection points 100 as recited in the claims. DRASLER medical apparatus meets all structural limitations as recited in

Art Unit: 3731

the claims because at least a pair of adjacent longitudinal members 10 each has a circumferential width 105 less than a radial thickness 115 (Fig. 5).

As to claims 17, 20 and 22, when deployed in a tortuous blood vessel, beams 10 in an expanded configuration are mostly curved through out the lengths and the device is substantially maintained in an static equilibrium condition, in which condition the beams are substantially free from stress concentration.

As to claim 36, two longitudinally connected beams 100 define a longitudinal member as recited in the claim.

As to claims 38-39, beams 100 have generally uniform cross-sections substantially along the lengths.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 10, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over DRASLER et al (6,245,101) in view of TAHERI (5,617,878).

As to claim 10 and 23, DRASLER discloses substantially all structural limitations as recited in the claim, except for a conical shape of the medical device in an expanded condition. TAHERI (Fig. 13; col. 5, lines 25-34) discloses conical stent 40 for an artery having a decreasing diameter. It would have been obvious to one of ordinary skill in the art at the time the invention was made to make CHUTER device having a conical shape for an artery having a

Art Unit: 3731

decreasing diameter.

As to claim 37, DRASLER does not disclose a hinge structure having the same profile as that of the pair of the longitudinal struts. However, it is well known to provide a hinge structure having a profile the same as that of a beam of a stent and further it would have been obvious to one of ordinary skill in the art at the time the invention was made to size the beam as recited in the claim because changing the size/dimension of a component as one desires is quite within level of one of ordinary skill in the art.

Response to Amendment

Drasler (Fig. 5, 28) clearly shows struts/hinges 23 having generally longitudinal members with radial thickness 115 being greater than circumferential width 105. Notice that hinges 23 are portions of the struts forming Drasler stent. The claimed invention has not been clearly defined over Drasler.

Conclusion

This is a RCE Application. All claims are drawn to the same invention previously claimed and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37


Art Unit: 3731

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vy Q. Bui whose telephone number is 571-272-4692. The examiner can normally be reached on Monday-Tuesday and Thursday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T Nguyen can be reached on 571-272-4963. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


06/21/2005

Vy Q. Bui
Primary Examiner
Art Unit 3731